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Conclusion....

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opinion of the United
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OPINIONS

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September 18, 1980.
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§1254(1). Jurisdict
States District Cour
District of Virginia

the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §185 et seq.

QUESTIONS PRESENTED

1. In situations where the collective bargaining agreements provide for mandatory arbitration and include a no-strike clause, may a district court enjoin work stoppages prior to an arbitrator's determination of the arbitrability of the underlying dispute?

2. Will the reading that the Fourth Circuit places on Boys Markets[1] and Buffalo Forge[2] render meaningless the arbitration and no-strike clauses of collective bargaining agreements?

---

[1]Boys Markets, Inc. v. Retail Clerks Union, No. 770, 398 U.S. 235 (1970)

[2]Buffalo Forge Co. v. United Steelworkers of America, AFL-CIO, 428 U.S. 397 (1976)

CASE

Hampton Roads

)[3], Cargill,

Terminal

(Rogers)[5] filed

District Court

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invited further evidence
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members and the aggression of the Soviet Union in Afghanistan, the district court found that:

> ...No evidence of a mandate from the Union's membership has been presented, nor did the Union make any effort to notify its members or employees that Union members who wished to work or who did not support this action could ignore the Union's order without fear of retaliation. The Union cannot now rely upon its members' First Amendment freedoms, even if these freedoms extend to the challenged work stoppage, where there is no evidence that these actions represent the opinion of any substantial portion of the Union's membership.

Once the district court determined from the evidence that the underlying dispute between the parties was whether the union could, under the collective bargaining agreements, engage in a work stoppage to force management to refrain from dealing with a particular customer an issue that was clearly arbitrable, it next analyzed the contractual

the union:

, the defendants' entered into an o perform services. t of this agreement iction on the s ability to use a ge as a form of for its political re is nothing ional in requiring nts to fulfill actual obligations circumstances.

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A AGREEMENT)

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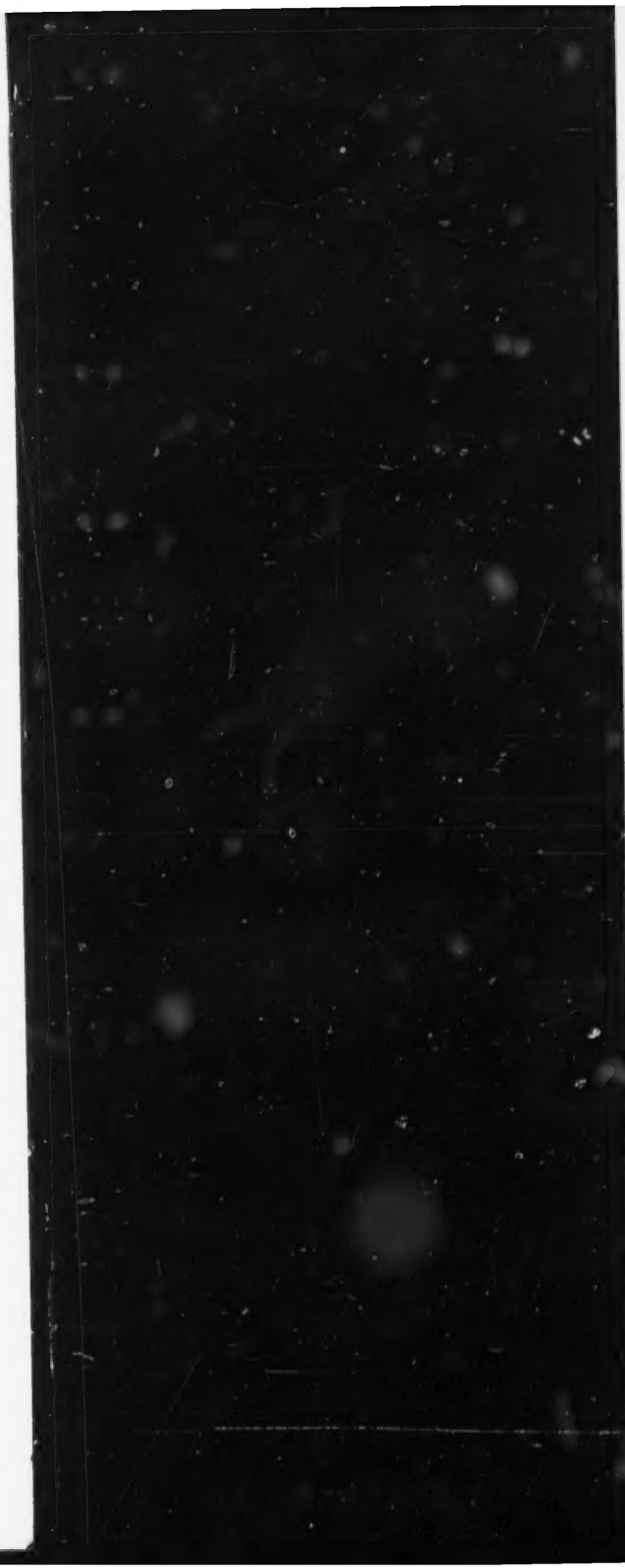

impartial tribunal tha
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U.S. at 253, n. 22. T
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reduced if injunctive
withheld." Id. at 249

Respondents argue
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in Buffalo Forge Co. v
Steelworkers of Ameri
U.S. 397 (1976) held
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the decision reached by this Court in Buffalo Forge. However, that decision was distinguished rather easily by the district court in the instant case. In Buffalo Forge, the trial court was faced with a sympathy strike by one union on behalf of a sister union against the first union's employer. After hearing the evidence presented by the parties, the trial court found that the underlying dispute did not arise out of the contractual relations between the striking union and management. Rather, according to the evidence, the underlying dispute was between management and the sister union, not the striking union. Finding that an arbitrator could decide nothing concerning that issue, the district court disallowed injunctive relief on the question of the underlying dispute, holding that the issuance of an

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Boys Markets requireme
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Id., at 407. Based on
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visions of the contract
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district court thus enj
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ISION OF THE UNITED STATES
F APPEALS FOR THE FOURTH
EFFECTIVELY PROHIBITS A
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sing the district court, the
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the Fourth Circuit effectively removes from the district court.

Buffalo Forge and Boys Markets read together will cause district courts to be faced with difficult determinations concerning the underlying disputes prompting work stoppages. By reason of those decisions, the district courts may safely conclude that a pre-arbitration injunction in a situation involving a sympathy strike is prohibited (Buffalo Forge) while a pre-arbitration injunction is perfectly proper when the union questions the authority of management to designate certain individuals to perform certain tasks (Boys Markets). In any factual situation between those extremes, such as the instant case, the district court must hear and evaluate the evidence and then determine whether the dispute is within the scope of the parties' contractual commitments. This

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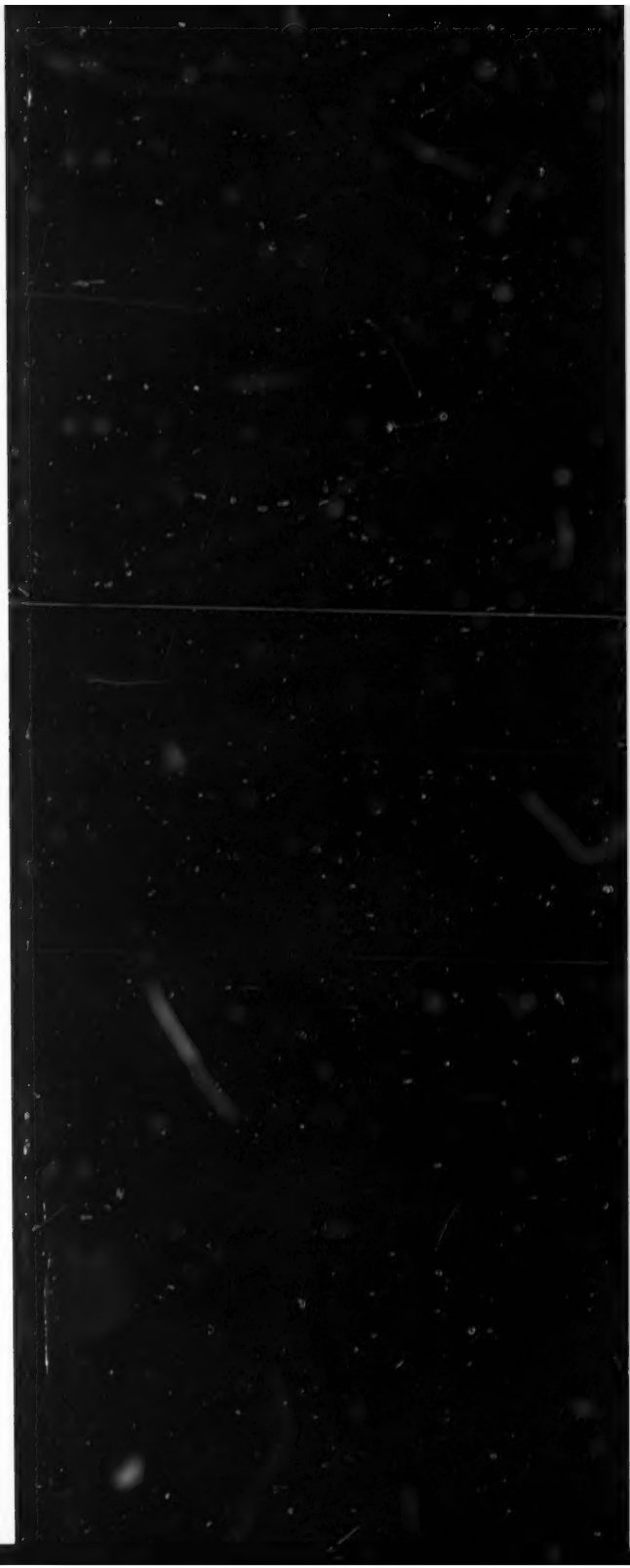

and directly opposite
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The impact of the
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not the underlying dispute was arbitrable. In the highly volatile business of international trade, a work stoppage for even a few hours could result in irreparable harm to management during the period that the issue was being arbitrated. In many cases, the delay would render the arbitration process meaningless as the parties affected by the strike would have no choice but to consider alternative sources to satisfy their contractual commitments.

Boys Markets was decided to insure that the arbitration process would function as contemplated by the parties. The decision in Boys Markets affords equitable treatment to both parties to the agreement by insuring that the arbitration process has an opportunity to resolve disputes arising under the collective bargaining agreements. Buffalo Forge can not be read to remove

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Appendix

TATES DISTRICT COURT
DISTRICT OF VIRGINIA
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HIPPING ASSOCIATION

CIVIL ACTION
NO. 80-186-N

AND SHIPPING

Plaintiffs,

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Defendants.

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U.S.C. § 185.

7. Cargill employs approximately eighty-four employees at its Chesapeake terminal facility. Local 1963 of the ILA is the exclusive bargaining agent for the production, maintenance, inspection, office, and clerical workers employed at this facility and is authorized to enter into agreements with Cargill on behalf of these employees.

8. On January 16, 1980, Cargill entered into a collective bargaining agreement with ILA Local 1963 covering the production and maintenance work and related activities at Cargill's Chesapeake grain elevator. This Agreement contains a mandatory grievance and arbitration procedure which governs all disputes between Cargill and Local 1963, which provides:

GRIEVANCES

1. A grievance is any controversy between the Company and

to any matter
e interpretation,
or violation of
n of this agreement,
t no grievance shall
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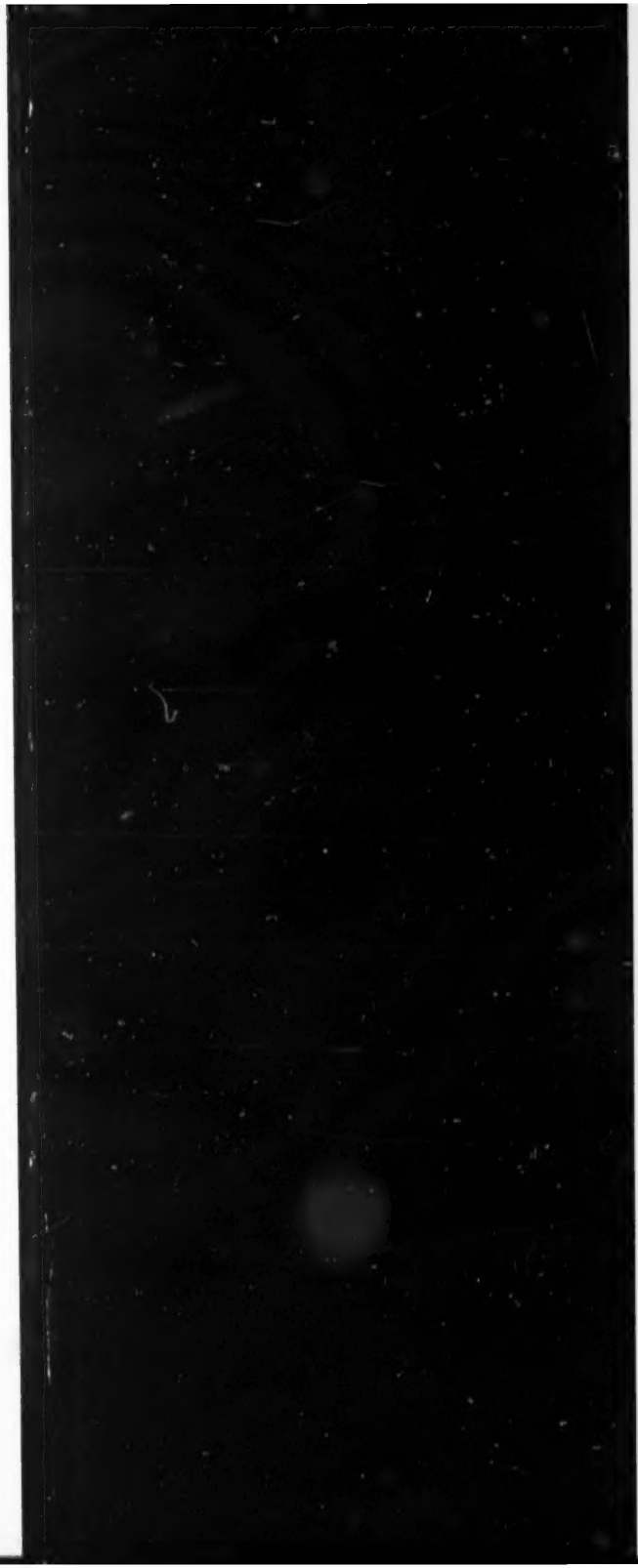

No grievance shall
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Company in writing
Union within fiftee
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answer provided in
(3) above.

3. Arbitration sha
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this Agreement or a
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hereto, nor to esta
change any wage.

4. It is expressly
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are not covered by
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sole purpose of whi
make grievances ari
and during the term
Agreement subject t
arbitration.

5. The employees,
ally and collective
Union, agree that a
date of the signing
Agreement there are
unsettled claims or
grievances.

The Cargill-ILA

Agreement also contains

No-Strike clause:

ARTICLE XII

STRIKES AND LOCKOUTS

It is agreed that the union and its members, individually and collectively will not during the term of this Agreement, cause, permit, or take part in any strike, picketing, sit-down, stay-in, slow-down or other curtailment or restriction of production or interference with work in or about the Company's plant or premises so long as the Company abides by the terms of this Agreement. The Company reserves the right to discipline any employee taking part in any violation of this Article of this Agreement. Correlative with this provision, the Company agrees not to engage in a lockout so long as the Union abides by the terms of this Agreement.

9. On December 5, 1977, on behalf of its members, HRSA entered into a collective bargaining agreement with the ILA and its affiliated locals in the Port of Hampton Roads, which will expire on September 30, 1980. This agreement

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(d) APPLICATION
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In the event of
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ECTION 37

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supportable. No evidence of a mandate from the Union's membership has been presented, nor did the Union make any effort to notify its members or employees that Union members who wished to work or who did not support this action could ignore the Union's order without fear of retaliation. The Union cannot now rely upon its members' First Amendment freedoms, even if these freedoms extend to the challenged work stoppage, where there is no evidence that these actions represent the opinion of any substantial portion of the Union's membership.

Moreover, the defendants' voluntarily entered into an agreement to perform services. One incident of this agreement was a restriction on the membership's ability to use a work stoppage as a form of expression for its political views. There is nothing

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Incorporated, or from a
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Roads Shipping Associat
Union.

2. The defendants,
agents, servants, emplo
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RESTRAINED from any acti
support of other persons
service any vessels carr
cargo to or from the So
any other way refusing t
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persons relating to vess
the Soviet Union.

3. Cargill, Incorpo
Terminal and Shipping Co
Hampton Roads Shipping A
the defendants shall pro
grievances over the lice

cargo to and from the Soviet Union in accordance with the contractual grievance procedure contained in Section 38 of the HRSA-ILA Agreement and Article XI of the Cargill-Local 1963 Agreement.

4. The plaintiffs shall continue to maintain a bond in the amount of One Hundred Dollars ($100.00) throughout the duration of this injunction.

5. This injunction shall continue until further Order of the Court.

_____
United States
District Judge

Nunc Pro Tunc
February 22, 1980
Norfolk, Virginia

APPEALS
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> labor dispute to prohibit any persons participating or interested in such dispute (as these terms are herein defined) from doing , whether singly or in concert any of the following acts:
>
> (a) ceasing or refusing to perform any work or to remain in any relation of employment ... .[5]

Boys Markets created a narrow exception to the Norris-LaGuardia anti-injunction provisions and allowed federal district courts to issue injunctions against strikes when the union and company have entered into a collective bargaining arrangement containing a no-strike clause, thereby strengthening the arbitration process, stressed in the Steelworkers trilogy.[6]

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[5] 29 U.S.C. Sec. 104 (1973).

[6] United Steelworkers of America v. Am. Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of America v. Enterprise Corp., 363 U.S. 593 (1960).

e refined the Boys Mar-
to the Norris-LaGuardia
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discussed by Judge
s Court in Cedar Coal Co.
Workers of America.[7]
said:

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of a no-strike clause
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153, 1169 (4th Cir. 1977)
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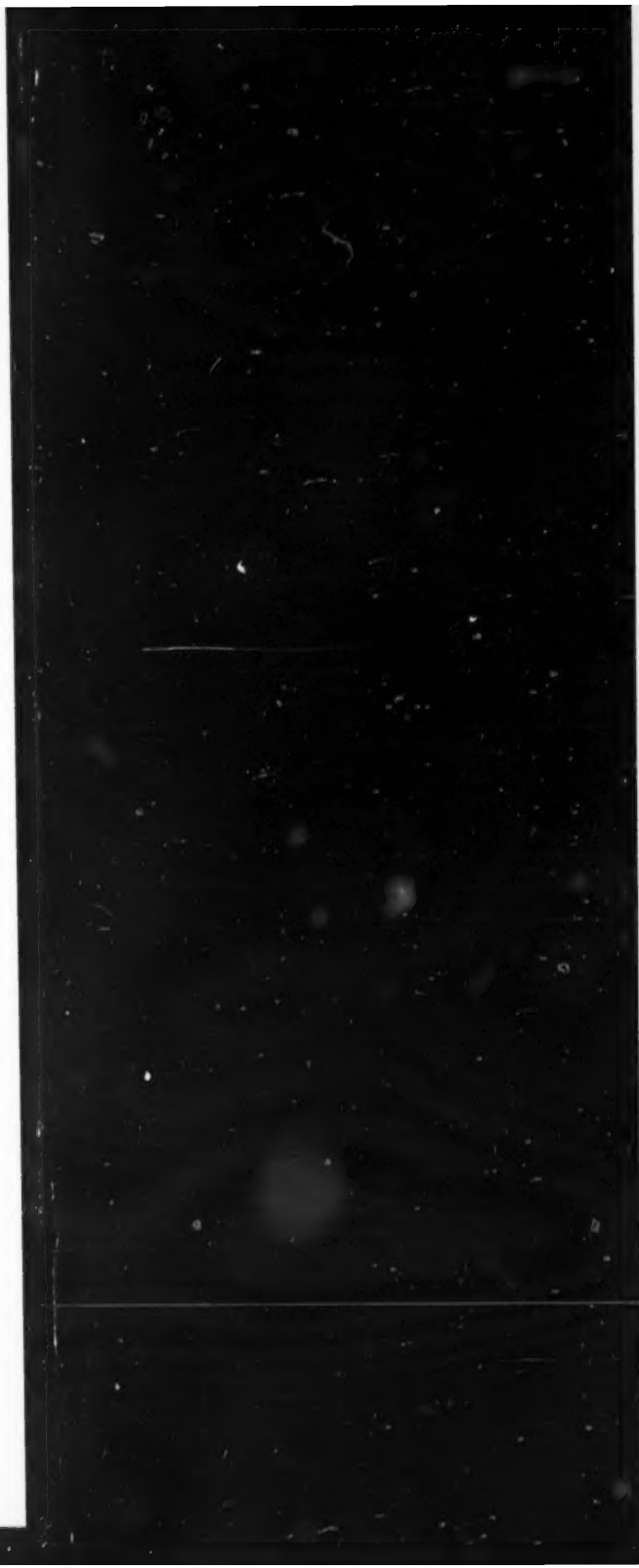

> But this would still
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The underlying cause

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[9] Id. at 412.

the collective bargaining agreement in order for a work stoppage to be enjoined pending arbitration, the trial court's issuance of an injunction based on its perception that the no-strike clause had been violated was clearly contrary to this holding and the holding of this Court in Cedar Coal.

In Buffalo Forge, the Supreme Court, in considering a complaint for an injunction to require Union members to cross the picket line of another Union (a classic sympathy strike), said:

> Nor was the injunction authorized solely because it was alleged that the sympathy strike called by the Union violated the express no-strike provision of the contracts.
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> ...
>
> ...Here the Union struck, and the parties were in dispute whether the sympathy strike violated the Union's no-strike undertaking. Concededly, that issue was arbitrable. It was

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REVERSED

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hip Company, Inc.
Point Docks, Inc.
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air Services, Inc.
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 1980, three copies of the foregoing Petition for Writ of Certiorari were mailed, postage prepaid to each of the following:

Sidney H. Kelsey, Esquire
1408 Maritime Tower
Norfolk, Virginia 23510

Thomas W. Gleason, Esquire
One State Street Plaza
New York, New York 10004

I further certify that all parties required to be served have been served.

/s/ Guilford D. Ware

CRENSHAW, WARE & JOHNSON
1640 Virginia National Bank Building
Norfolk, Virginia 23510

Counsel for Petitioners